

Remarks

On January 19, 2005, the Board remanded this case (original Appeal number 2005-0225) to the Examiner and asked the Examiner to make clear whether Appellants' exhibit selected excerpts from Principles of Polymerization by George Odian ("Exhibit") was submitted before the case was appealed.

In the Supplemental Examiner's Answer filed on December 27, 2005, the Examiner told the Board that Appellants did not submit the Exhibit until 3/24/04 when Appellants filed the Appeal Brief and that he neither considered nor entered.

On February 15, 2006, Appellants filed a Reply to the Supplemental Examiner's Answer. In the Reply, Appellants attached an Amendment filed on September 25, 2003 ("Amendment"). The Exhibit was apparently attached to the Amendment. The Amendment stated: "The problem of low monomer conversion of allylic polymerization is well recognized in the art and it is commonly believed to be resulted from the *degradative chain transfer* of allylic monomers. See "*Principles of Polymerization*" by George Odian, page 250-251 (attached)." See *Amendment, Part II, Reasonable Expectation of Success*. This statement clearly put the Examiner on notice of the attached Exhibit. Furthermore, the Examiner should have seen the Exhibit because Appellants' Amendment of September 25, 2003 was entered by the Examiner on November 18, 2003 (see Office Action of November 18, 2003) and the Office Action had no indication that the attached Exhibit was missing.

On April 30, 2007, the Board remanded the case (new Appeal number 2007-0381) to the Examiner and ordered the Examiner "to consider and prepare an appropriate response to the Appellant's Reply." See *page 3, Order Remanding to the Examiner, April 30, 2007*.

Responding to the Board's order, the Examiner issued an Advisory Action on June 5, 2007 to Appellants. In the Advisory Action, the Examiner has

admitted that “The Examiner was in error by stating that the exhibit was not submitted by Appellants until 3/24/04—this was an inadvertant oversight by the Examiner.” See the Advisory Action, item 4. Nevertheless, the Examiner still refuses to consider the Exhibit. *See the Examiner’s Advisory Action, June 1, 2007.*

As discussed above, the filing record clearly indicates that Appellants submitted the Exhibit as an attachment to the 9/25/03 Amendment. Enclosed is an Affidavit by Linda Marchione, Sr. Paralegal of Lyondell Chemical Company, attesting to this effect.

Appellants believe that the Examiner’s Advisory Action is not an appropriate response to the Appellant’s Reply because the Examiner still refuses to consider the Exhibit and to allow Appellants’ claims.

First, the Examiner should have noticed the Exhibit if he had read Appellants’ Amendment because the Amendment argued against the Examiner’s rejection based upon the Exhibit. As discussed above, the Examiner entered the Amendment on November 18, 2003. *See Amendment of September 25, 2003, Part II Reasonable Expectation of Success.*

Second, in Appellants’ Appeal Brief filed on November 24, 2003, Appellants again made an argument against the Examiner’s rejection based on the Exhibit. The Brief states: “The problem of low monomer conversion of allylic polymerization is well recognized in the art and it is commonly believed to be resulted from the *degradative chain transfer* of allylic monomers. See “*Principles of Polymerization*” by George Odian, page 250-251 (attached).” *See the Brief, page 5, (III) Reasonable Expectation of Success.* If the Examiner believed that the Exhibit attached to the Appeal Brief was not submitted anytime before the Brief, the Examiner should have objected to the Exhibit and Appellants’ arguments based upon the Exhibit. However, the record indicates that the Examiner did not object to either the Exhibit or Appellants’ arguments based

upon the Exhibit. *See Examiner's Answer, mailed March 24, 04, page 6, Response to Arguments.*

Third, the Board remanded the case to the Examiner on January 19, 2005, and specifically instructed the Examiner to make clear whether the Exhibit was submitted anytime before the Appeal Brief by Appellants. Again, the Examiner missed this opportunity to make the record correct. Instead, the Examiner provided a false statement to the Board saying that Appellants did not submit the Exhibit until the Appeal Brief.

In view of the record, the Examiner has repeatedly failed to diligently examine the application and to consider Appellants' arguments against the Examiner's rejections. Appellants firmly believe that the pending claims of this Appeal application are patentable for the reasons stated in the Appeal Brief. Therefore, Appellants respectfully request that the Honorable Board of Appeals and Interferences reverse the Examiner's rejection and allow the claims.

Respectfully submitted,
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